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Supreme Court, U.S.
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AUG 25 1988
JOSEPH F. SPANIOL, JR.
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88-345

NO. _____

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1987

THE STATE OF FLORIDA,

Petitioner,

vs.

OLIVER WENDALL BELCHER,

Respondent.

ON WRIT OF CERTIORARI TO THE
DISTRICT COURT OF APPEAL
OF FLORIDA, THIRD DISTRICT

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QUESTION PRESENTED

If a suspect in a criminal case a.) has been advised of his rights under Miranda, b.) answers some questions put to him and then c.) expresses his desire to cut off questioning, do the police fail to "scrupulously honor" his Fifth Amendment rights by later asking him threshold questions directed solely to whether or not he would consent to any further questioning without first re-advising him pursuant to Miranda?

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OPINION BELOW

The opinion of the Third District Court of Appeal of Florida affirming the trial court's suppression order can be found at State v. Belcher, 520 So.2d 303 (Fla. 3 DCA 1988). It is reproduced in the appendix. (App. 1-11).

The Florida Supreme Court's denial of discretionary review is also part of the appendix. (App. 12, 13).

STATEMENT OF JURISDICTION

The opinion of the Third District Court of Appeal of Florida was entered on February 2, 1988. Rehearing was denied on March 17, 1988. The Florida Supreme Court declined to accept the case on June 30, 1988. This petition was filed within 60 days of that denial. The jurisdiction of this Court is invoked under 28 U.S.C. §1257(3).

CONSTITUTIONAL PROVISIONS INVOLVED

The pertinent part of the Fifth Amendment to the United States Constitution provides:

> [N]or shall [any person] be compelled in any criminal case to be a witness against himself...

The pertinent part of the Fourteenth Amendment to the United States Constitution provides:

> [N]or shall any State deprive any person of life, liberty, or property, without due process of law...

STATEMENT OF THE CASE

Respondent was arrested and charged in a double homicide. He made incriminating statements to the police. The trial court suppressed those statements. The Florida appellate courts have affirmed. This petition follows.

Respondent was first questioned by a Detective Conley concerning his connection to a double homicide. Miranda warnings were duly given. Respondent signed a rights waiver form. Conley questioned respondent for several hours, during which time respondent twice requested permission to examine his rights waiver form. He was allowed to do so. Respondent decided to cut off police questioning following his second

examination of the form. Questioning ceased.

Detective Blocker, not present during this round of questioning but aware that respondent had invoked his right to remain silent, entered the interrogation room approximately one hour after Conley had finished. Without first re-advising respondent of his Miranda rights, this officer proceeded to explain the difference between first and second degree murder to respondent. He also informed respondent that all the evidence at hand pointed to first degree murders having been committed. Blocker then asked respondent if he would like to tell his side of the story. Respondent asked to be left alone for a few moments to think things

over. His wishes were again respected, and Blocker left. When Blocker returned five minutes later, he asked if respondent wished to talk, and respondent said, "Just get your pad and pencil." He then volunteered an incriminating statement. This oral statement was followed by a formal written one which contained the standard Miranda warnings in the text.

The trial court ruled that respondent's right to have questioning cease was not "scrupulously honored" by Blocker and it suppressed all statements. The Third District Court of Appeals affirmed, citing this Court's decision in Michigan v. Mosley, 423 U.S. 96 (1975).

ARGUMENT

Why Review Should Be Granted

Review should be granted because the Florida courts have not construed this Court's Miranda[1] decision in a common sense fashion. Miranda should not be used in a manner which prevents mere inquiry into the threshold question of a suspect's desire to allow further contact with the police. The Florida court's have done just that, and Miranda has been misapplied.

In Michigan v. Mosley, supra, this Court recognized that:

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[1] Miranda v. Arizona, 384 U.S. 436 (1966).

> "[A] blanket prohibition against the taking of voluntary statements or a permanent immunity from further interrogation, regardless of the circumstances, would transform the Miranda safeguards into wholly irrational obstacles to legitimate police investigative activity, and deprive suspects of an opportunity to make informed and intelligent assessments of their interests." Mosley, at 102.

The Court went on to state that Miranda's goal was to prevent the creation of a coercive atmosphere, and that this goal is met if the police respect a suspect's wishes to break off questioning.

Mosley addressed the issue of renewed police interrogation of a suspect once that suspect had invoked his

right to break off questioning. This Court found that police may properly submit a suspect to continued interrogation, and it listed several factors which would indicate that the police had indeed "scrupulously honored" the Fifth Amendment rights of the accused. Among these factors were the re-advising per Miranda before questioning re-commenced and the passage of time between interrogation sessions.

In this case, respondent signed a rights waiver form and submitted himself to questioning by Detective Conley. He twice read over that form during his time with Conley, and finally invoked his right to break off questioning. His wishes were honored by Conley.

One hour later, Detective Blocker arrived and merely inquired if respondent would agree to resume questioning. He did not subject respondent to interrogation. Respondent asked for a few minutes to think it over, and again his wishes were respected. Blocker left. When Blocker returned, respondent had changed his mind about wanting to talk to the detectives, and he then **volunteered** an incriminating statement. Blocker had **never** directed any questions to respondent.

This case must be distinguished from Mosley's "double interrogation" scenario. It should be viewed as one which goes more to the question of how police may inquire if a suspect wishes to resume contact after invoking

Miranda. Are the police constitutionally required to repeat their Miranda warnings as a condition precedent to even asking if a suspect would consent to further contact? The Florida courts have answered in the affirmative. Logic dictates that the answer should be "no."

According to Miranda and Mosley, the analysis of this issue should be directed to the overall goal of the warnings, the degree of police compliance with a suspect's wishes, and the scope of a policeman's right to have further contact with that suspect. These considerations must be examined alongside the particular facts of the case. If that is done, it is clear that:

a.) A coercive atmosphere did not exist below. Respondent was fully aware of his rights, having read and signed a waiver form and having twice re-read that form.

b.) The police respected respondent's requests to break off questioning each time he asked them to do so. Detective Conley left respondent alone immediately. Blocker came in one hour later and left as soon as respondent told him to let him think over whether he wanted to resume talking.

c.) Finally, Blocker's contact with respondent was **not** tantamount to a second round of interrogation. Rhode Island v. Innis, 446 U.S. 291 (1980). All respondent was left with was the

issue of whether or not he would allow a resumption of questioning. Blocker did not question him on any aspect of the crimes. Respondent volunteered his statement to Blocker. This scenario is therefore subject to less criticism than that of Mosley, where two interrogation sessions were involved.

The Florida courts have misinterpreted Miranda and Mosley to require a re-advising by Detective Blocker prior to his inquiring into respondent's desire to renew questioning. What Blocker did was merely prefatory to questioning. The Constitution did not require him to repeat Miranda warnings.

CONCLUSION

This Court should grant review because an important question of law has been raised. Miranda should not be interpreted to place an impenetrable wall between police and the accused once that person has invoked his right to remain silent. Police should be allowed to inquire of a suspect if he or she wishes to re-commence contact without first re-advising that suspect of his Miranda rights, and any volunteered statement which emerges should be admissible in evidence.

Respectfully submitted,

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STEVEN T. SCOTT
Assistant Attorney General

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OCTOBER TERM, 1987

THE STATE OF FLORIDA,

Petitioner,

vs.

OLIVER WENDALL BELCHER,

Respondent.

ON WRIT OF CERTIORARI TO THE
DISTRICT COURT OF APPEAL
OF FLORIDA, THIRD DISTRICT

APPENDIX

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The STATE of Florida, Appellant,

v.

Oliver Wendall BELCHER, Appellee.

No.87-7.

District Court of Appeal of Florida,

Third District.

Feb. 2, 1988.

Rehearing Denied March 17, 1988.

Robert A. Butterworth, Atty. Gen., and Margarita M. Febres, Asst. Atty. Gen., for appellant.

Bennett H. Brummer, Public Defender, and Marti Rothenberg and Harvey J. Sepler, Asst. Public Defenders, for appellee.

Before **HENDRY, BASKIN** and **FERGUSON, JJ.**

PER CURIAM.

The State appeals from an order granting the defendant's motion to suppress his confession.

Ann DeMuro and Charles Woods were robbed and murdered as they opened a builders' supply company in the early morning of January 30, 1985. Oliver Belcher, a former employee of the company, was taken into custody three days later at 12:30 a.m. and charged with the murders. At approximately 1:55 a.m., Detective Conley approached Belcher in the interview room and informed him of the charges and read him his Miranda rights. Stating that he understood his rights and was willing to speak without an attorney present, Belcher signed a rights waiver form. In response to questioning, the defendant admitted that he had taken a car belonging to one of the murder victims, but denied that he had committed the murders. Conley continued to question Belcher until 4:50

a.m., at which time the defendant said to Conley, "I don't want to talk to you any more." Conley stopped questioning the defendant and left the room.

A short time later Conley placed a telephone call to another detective on the case, Blocker. Conley informed Blocker that the police had arrested Belcher and that Belcher denied any involvement in the murders and no longer wanted to talk to him. When Blocker arrived at the police station at approximately 6:00 a.m., the defendant was still sitting in the interview room. Blocker entered the interview room, introduced himself to the defendant, and told the defendant that he wanted to hear his side of the story. At no time did Blocker reinform the defendant of

his Miranda rights. The defendant responded that he wanted to think about it and would like to be left alone. Blocker left the room for five minutes. He then returned to the interview room and again asked the defendant if he wanted to talk to him. The defendant replied, "Just get your pad and pencil," and then gave a confession.

Prior to trial, the defendant moved to suppress his confession on grounds that the police had violated his Miranda rights and his privilege against self-incrimination. At the suppression hearing Detective Blocker testified that it was his impression that, when the defendant told Conley that he no longer wanted to talk, the defendant intended

that statement to apply only to Conley, and not to other police officers. Blocker admitted, however, that he never asked the defendant to clarify the statement. The trial court granted the defendant's motion to suppress the confession, ruling that once the defendant had exercised his option to remain silent, his right to terminate questioning was not scrupulously honored.

The State contends that the trial court erred in concluding that the defendant's rights were not scrupulously honored, and argues that the confession is admissible because it was obtained pursuant to reasonable police conduct. We disagree and affirm.

In Michigan v. Mosley, 423 U.S. 96, 96 S.Ct. 321, 46 L.Ed.2d 313 (1975), the Supreme Court held that the admissibility of statements obtained after a suspect has cut off questioning depends on whether the suspect's "right to cut off questioning" was "scrupulously honored." Id. at 104, 96 S.Ct. at 326, 46 L.Ed.2d at 321. The critical factors in a determination whether a suspect's rights were scrupulously honored include:(1) whether the police ceased the interrogation immediately upon defendant's request; (2) whether the questioning was resumed only after a significant amount of time had passed; (3) whether fresh Miranda warnings were provided; and (4) whether the later questioning was restricted to a crime that had not been the subject of the

initial interrogation for which the right to silence had been invoked. Mosley.

In this case, Detective Conley stopped the interview when Belcher exercised his right to cut off questioning. However, the other factors set forth in Mosley support the trial court's conclusion that the defendant's right to cut off questioning was not scrupulously honored.

After the defendant had invoked his right to silence, the police continued to detain him in the interrogation room. The first detective placed a telephone call to a second detective who arrived at the station house and attempted to renew questioning after a

passage of time approximating an hour. When the defendant asked the second detective to leave him alone to allow him time to think things over, the detective merely stepped outside the interview room for five minutes. Although the Supreme Court did not define in Mosley what constitutes a "significant period of time," some courts have found periods of time ranging from minutes to several hours to be insufficient under the Mosley standard. United States v. Clayton, 407 F.Supp. 204, 206 (E.D.Wis.1976) (fifty minutes insufficient even where defendant was given new Miranda rights and signed waiver); United States v. Olof, 527 F.2d 752 (9th Cir.1975) (three hours insufficient despite new warnings where police sought to wear down

defendant). Other courts have found periods of time ranging from less than an hour to several hours to be sufficient where the defendant was given fresh Miranda warnings and the defendant waived his rights. McNickles v. State, 505 So.2d 633 (Fla. 4th DCA) (forty-five minutes sufficient where new warnings were given and defendant waived his rights), rev. denied, 515 So.2d 230 (Fla. 1987); State v. Issac, 465 So.2d 1384 (Fla. 2d DCA 1985) (one hour and forty minutes sufficient where defendant was advised of rights and waived them). Here, however, Detective Blocker neither advised Belcher of his rights when he first attempted to question him nor informed him of his rights when the questioning resumed five minutes later.

Although requestioning a defendant about the same crime following a invocation of the right to silence is not alone determinative of whether the invocation was scrupulously honored, Jackson v. Wyrick, 730 F.2d 1177, 1180 (8th Cir.) cert. denied, 469 U.S. 849, 105 S.Ct. 167, 83 L.Ed.2d 102 (1984), it is a significant factor in determining whether the right to cut off questioning was respected and, when coupled with a short passage of time and a failure to give fresh warnings, has been held fatal. United States v. Lopez-Diaz, 630 F.2d 661, 664 (9th Cir.1980); United States v. Hernandez, 574 F.2d 1362, 1369 (5th Cir.1978).

The record supports the trial court's ruling that the defendant's

right to cut-off questioning was not scrupulously honored. A trial court's ruling on a motion to suppress has a presumption of correctness, and where the record supports the trial court's ruling, it is impermissible for the district court to substitute its judgment for that of the fact-finder. Wasko v. State, 505 So.2d 1314, 1316 (Fla.1987); DeConingh v. State, 433 So.2d 501 (Fla.1983), cert. denied, 465 U.S. 1005, 104 S.Ct. 995, 79 L.Ed.2d 228 (1984).

Affirmed.

SUPREME COURT OF FLORIDA

Thursday, June 30, 1988.

STATE OF FLORIDA,	)	
Petitioner,	)	
v.	)	Case No. 72,188
	)	District Court of Appeal
OLIVER WENDELL BELCHER,	)	Third District No. 87-7
Respondent.	)	
	)	

This cause having heretofore been submitted to the Court on jurisdictional briefs and portions of the record deemed necessary to reflect jurisdiction under Article V, Section 3(b), Florida Constitution (1980), and the Court having determined that it should decline to accept jurisdiction, it is ordered that the Petition for Review is denied.

No Motion for Rehearing will be entertained by the Court. See Fla.R.App.P. 9.330(d).

MCDONALD, C.J., EHRLICH, SHAW, BARKETT AND GRIMES, JJ., concur.

A True Copy
TEST:

Sid J. White
Clerk Supreme Court

By: //s//
Deputy Clerk

H

cc: Hon. Louis J. Spallone, Clerk
Hon. Richard P. Brinker, Clerk
Hon. Alfonso Sepe, Judge

Margarita Muina Febres, Esquire
Marti Rothenberg, Esquire

Supreme Court, U.S.
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ON PETITION FOR WRIT OF CERTIORARI TO THE
DISTRICT COURT OF APPEAL OF FLORIDA
THIRD DISTRICT

BRIEF OF RESPONDENT IN OPPOSITION

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ON PETITION FOR WRIT OF CERTIORARI TO THE
DISTRICT COURT OF APPEAL OF FLORIDA, THIRD DISTRICT

BRIEF OF RESPONDENT IN OPPOSITION

The respondent, Oliver Wendall Belcher, files this brief in opposition to the petition for writ of certiorari filed by the State of Florida in this cause.

COUNTERSTATEMENT OF THE CASE AND FACTS

Respondent's counterstatement of the case and facts will be limited to a recitation of pertinent aspects of the proceedings below which are omitted from the statement of the case in the state's petition.

On February 2, 1985, the respondent Belcher was arrested for a double homicide and transported to an interview room at the Metro Dade homicide office in Miami. A Detective Conley began to interrogate Belcher at 1:55 a.m. Detective Conley read Belcher his Miranda rights; Belcher indicated he understood his rights and was willing to speak without an attorney being present. Belcher then gave the detective certain information regarding the

crime. Detective Conley interviewed Belcher until approximately 4:50 a.m.

At 4:50 a.m., Belcher told Detective Conley, "I don't want to talk to you any more." Detective Conley stopped questioning Belcher and left him alone in the interview room. Shortly thereafter, Detective Conley telephoned Detective Blocker, another detective working on the case. Conley told Blocker that Belcher was under arrest for the crimes but that Belcher did not want to talk to him anymore. Conley told Blocker he had not been able to get Belcher to confess and asked Blocker to respond to attempt to talk to Belcher to get a statement implicating him in the crime.

Detective Blocker arrived at the homicide office about 6:00 a.m. and Conley showed him the original rights waiver form signed by Belcher. Conley further advised him that Belcher had waived his rights and had not requested an attorney, but that Belcher no longer wanted to talk to him. Detective Blocker entered the interview room, introduced himself to Belcher and told him he worked in homicide and "wanted to talk to him about the investigation which was going on." He told Belcher about the differences between first and second degree murder. Detective Blocker also told Belcher there was "an abundance of evidence" against him and that he wanted to hear Belcher's "side of the story" and further, that what Belcher told him "may weigh heavily as to what charges would be filed against him." Belcher told the detective he wanted "to think about it" and "would like to be left alone." The detective left Belcher alone for five minutes, then returned to the room and said to Belcher, "Do you want to talk to me?" Belcher replied, "Just get your pad and pencil." Detective Blocker got a pad and sat down with Belcher and Belcher confessed to the crime. Blocker did not reread Belcher his rights during either interview prior to taking this oral confession. A stenographer then arrived and Detective Blocker read Belcher his rights and took a formal written statement from him.

Detective Blocker further stated in court that it was his

"impression" that when Belcher stated to Conley he no longer wanted to talk to him, Belcher did not intend for that statement to apply to all police officers, only to Conley. Detective Blocker admitted, however, that he made no attempt to clarify the statement. He further felt that if Belcher really did not want to talk to him, Belcher would have reasserted his right not to talk.

REASONS FOR DENYING THE WRIT

> THE DECISION OF THE DISTRICT COURT OF APPEAL OF FLORIDA CORRECTLY AFFIRMED THE TRIAL COURT'S GRANTING OF BELCHER'S MOTION TO SUPPRESS HIS CONFESSION WHERE THE CONFESSION WAS OBTAINED AFTER AN UNCONSTITUTIONAL RE-INTERROGATION AFTER BELCHER INVOKED HIS RIGHT TO REMAIN SILENT, AND WHERE NO THRESHHOLD QUESTIONS WERE ASKED OF BELCHER AS TO WHETHER HE WISHED TO CONSENT TO A REQUESTIONING.

In its petition, the State of Florida has phrased the question to this Court as follows:

> If a suspect in a criminal case a) has been advised of his rights under Miranda, b) answers some questions put to him and then c) expresses his desire to cut off questioning, do the police fail to "scrupulously honor" his Fifth Amendment rights by later asking him threshhold questions directed solely to whether or not he would consent to any further questioning without first readvising him pursuant to Miranda?

The issue as thus phrased by the state concerns whether a defendant, who exercised his right to cut off questioning, must be readvised of his Miranda warnings when the police merely ask him threshhold questions as to whether he wished to consent to any further questioning.

This issue, however, is simply not the issue in this case. This was not the issue in the trial court, it was not the issue in the Florida District Court of Appeal, and it is not the issue before this Court. This is so because the undisputed facts of this case establish the police did not intend to and did not in fact ask Belcher any threshhold questions as to whether he wished to consent to any further questioning. Instead, the facts show that the police specifically did not ask any such threshhold questions because they did not think they were necessary. The police felt they were free to continue interrogating Belcher about the crime after he told one officer he no longer wanted to talk so long as they changed the police officer conducting the interrogation. Moreover, they thought it was up to Belcher to sua sponte re-assert his right to silence upon requestioning by the different officer.

A review of the record demonstrates this lack of factual basis for the state's petition for writ of certiori. The record

establishes that Belcher was arrested and transported to an interview room at the Metro Dade homicide office in Miami at 1:55 a.m. on February 2, 1985, where he was interrogated by Detective Conley. Detective Conley read Belcher his Miranda rights and Belcher stated he understood his rights and was willing to speak to the detective without an attorney being present. Belcher then gave the detective certain information during an interview that was not claimed to have been coercive or the product of unconstitutional police action.

However, at 4:50 a.m., Belcher told Detective Conley, "I don't want to talk to you anymore." It is undisputed that Detective Conley stopped questioning Belcher and left the interview room. However, Detective Conley immediately placed a telephone call to another detective on the case, Detective Blocker, and asked him to come down to the station to speak to Belcher. Detective Blocker admitted in court that Detective Conley had informed him he had not been able "to get" Belcher to confess to the homicide and Detective Blocker further admitted that Conley asked him to come to the station for the express purpose of speaking with Belcher to get him to give a statement implicating himself in the crime.

Detective Blocker arrived at the homicide office about 6:00 a.m. and Conley showed him the original rights waiver form signed by Belcher. Detective Blocker testified Conley further advised him Belcher had waived his rights and had not requested an attorney, but that Belcher no longer wanted to talk to him. According to Detective Blocker, it was his "impression" that Belcher did not intend for that statement to apply to all police officers, only to Conley. Detective Blocker admitted, however, that he made no attempt to clarify the statement. Moreover, he felt that if Belcher really did not want to talk to him, Belcher would have reasserted his right not to talk.

Meanwhile, Belcher was still sitting in the interrogation room where Conley had left him. Detective Blocker entered the room, introduced himself to Belcher and told him he "wanted to talk to him about the investigation which was going on." He told

Belcher about the differences between first and second degree murder. He also told Belcher there was "an abundance of evidence" against him for which he would be charged and that what charges would be filed depended on what Belcher told them, and further told Belcher he "wanted to hear his side of the story."[1] Belcher told Detective Blocker he "wanted to think about it" and "would like to be left alone." Detective Blocker, however, merely stepped outside the interview room for five minutes before returning and asking Belcher, "Do you want to talk to me?" It was at this point Belcher replied, "Just get your pad and pencil" and confessed to the crime. It is undisputed that Detective Blocker did not re-advise Belcher of his Miranda rights on either occasion.[2]

Thus, it can be seen from the foregoing there is no issue regarding "threshhold questions directed solely to whether or not he would consent to any further questioning." (State's petition, pg. i) The state's own witness admitted he made no effort to clarify Belcher's statement because it was his "impression" Belcher's statement did not apply to him and he thought it was up to Belcher to sua sponte re-assert his right to silence upon requestioning.

Moreover, it is clear that Detective Blocker's questions to Belcher were not in any way "directed solely to whether or not he would consent to any further questioning" as claimed by the state. Detective Blocker entered the interrogation room a mere hour after Belcher had unequivocally asserted his right to silence and immediately told Belcher he "wanted to talk to him about the investigation which was going on." He described the difference between first and second degree murder. He told Belcher there was "an abundance of evidence" against him in this case for which he would be charged and that he wanted to hear

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1 The undisputed facts of this case are in direct contrast with the state's claim in its petition that Detective Blocker "merely inquired if respondent would agree to resume questioning." (State's petition, pg. 10)

2 Detective Blocker did not re-advise Belcher of his Miranda rights until after Belcher confessed. At that time, Detective Blocker called in a stenographer, reread Belcher his rights, then took a formal statement from him.

Belcher's "side of the story," and further, that what charges were filed would depend on what Belcher told him. It strains understanding to suggest, as the state has, that these questions by Detective Blocker were mere "threshhold questions" seeking to inquire into Belcher's "desire to renew questioning" and that what Blocker did "was merely prefatory to questioning." (State's petition, pg. 7, 13)

In deciding this case, the district court of appeal found that Belcher's right to cut off questioning was not "scrupulously honored" under Michigan v. Mosley, 423 U.S. 96, 96 S.Ct. 321, 46 L.Ed.2d 313 (1975). The appellate court found that Detective Blocker's requestioning Belcher about the same crime following Belcher's invocation of his right to silence coupled with the passage of a mere hour between interviews and Blocker's failure to give Belcher fresh Miranda warnings supported the trial court's ruling that Belcher's right to cut off questioning was not scrupulously honored. Thus, contrary to the state's claim in its petition, the appellate court did not require that Detective Blocker re-advise Belcher of his Miranda rights prior to talking with him. The appellate court found the lack of fresh Miranda warnings was only one factor to consider in determining that Belcher's right to cut off questioning was not scrupulously honored.

'Consequently, the Florida court has not "misinterpreted Miranda and Mosley to require a re-advising by Detective Blocker prior to his inquiring into respondent's desire to renew questioning." (State's petition, pg. 13) The court's decision is in full accord with the principles set forth by this Court in Miranda and Mosley. In Miranda v. Arizona, 384 U.S. 436, 474, 86 S.Ct. 1602, 1628, 16 L.Ed.2d 694 (1966), this Court established that one of the important procedural safeguards protecting the constitutional rights of persons subject to custodial interrogation is the "right to cut off questioning." In order "to assure that the exercise of the right will be scrupulously honored," Id., 384 U.S. at 478-479, Miranda requires the police to immediately terminate their interrogation of an accused once

the accused "indicates in any manner, at any time prior to or during questioning" that he wishes to remain silent and not speak to the police anymore. In Michigan v. Mosley, 423 U.S. 96, 96 S.Ct. 321, 46 L.Ed.2d 313 (1975), this Court reaffirmed the Miranda requirement and found the key inquiry was whether the right to cut off questioning was "scrupulously honored." Id., 423 U.S. at 103-104. The determination of whether a suspect's right to cut off questioning was scrupulously honored and whether the resumption of questioning was permissible depends upon the circumstances of each case in light of several factors, including whether the police immediately ceased the interrogation upon the defendant's request, whether they resumed questioning only after the passage of a significant period of time, whether they provided fresh Miranda warnings, and whether they restricted later interrogation to a crime that had not been the subject of the first interrogation for which the right to silence had been asserted. See Michigan v. Mosley, id.; Jackson v. Wyrick, 730 F.2d 1177, 1179 (8th Cir. 1984); United States v. Udey, 748 F.2d 1231, 1241 (8th Cir. 1984); United States v. Hernandez, 574 F.2d 1362, 1369 (5th Cir. 1978); United States v. Finch, 557 F.2d 1234, 1236 (8th Cir. 1977).

The record here demonstrates Belcher was confronted with requestioning in direct contravention of the principles and spirit of Miranda and Mosley. When Detective Conley's interview proved unsuccessful, Belcher was kept in continuous custody and exposed to two additional attempts to get him to confess to the same crime a mere hour after he invoked his right to remain silent, all without fresh Miranda warnings or waiver of rights and with no "threshhold questions" designed to clarify any perceived ambiguity. Such circumstances required the suppression of his confession, see Spradley v. State, 442 So.2d 1039 (Fla. 2d DCA 1983); United States v. Hernandez, 574 F.2d 1362 (5th Cir. 1978); United States v. Olof, 527 F.2d 752 (9th Cir. 1975); Shaffer v. Clusen, 518 F.Supp. 963, 965 (E.D. Wisc. 1981); United States v. Morris, 491 F. Supp. 226, 229 (S.D. Ga. 1980); United States v. Clayton, 407 F.Supp. 204 (E.D. Wisc. 1976), and

the Florida appellate court properly affirmed the trial court's suppression of the statements.[3] Such ruling by the court below does not present any ground for this Court's granting a writ of certiorari.

CONCLUSION

Based upon the foregoing, the respondent respectfully requests this Court to deny the state's petition for writ of certiorari.

Respectfully submitted,

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[3] The district court of appeal further stated that a trial court's ruling on a motion to suppress has a presumption of correctness and, where the record supports the trial court's ruling, as it did here, the appellate court may not substitute its judgment for that of the fact-finder.

The principle that a trial court's ruling on a motion to suppress comes to a reviewing court with the same presumption of correctness that attaches to jury verdicts and final judgments, and that a reviewing court should defer to the factfinding authority of the trial court, is firmly embedded in Florida jurisprudence. See Wasko v. State, 505 So.2d 1314 (Fla. 1987); DeConingh v. State, 433 So.2d 501 (Fla. 1983), cert. denied, 465 U.S. 1005, 104 S.Ct. 995, 79 L.Ed.2d 228 (1984); Stone v. State, 378 So.2d 765 (Fla. 1979), cert. denied, 449 U.S. 986, 101 S.Ct. 407, 66 L.Ed.2d 228 (1984). Of course, a prerequisite to the application of a presumption of correctness under Florida law is the presence in the record of substantial, competent evidence supporting the decision of the trial court under the correct analysis. The foregoing examination of the facts of this case demonstrates that the appellate court below properly determined that substantial, competent evidence supported the trial court's finding, under the principles established by this Court, that Belcher's right to cut off questioning was not scrupulously honored.